

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>HECTOR VARGAS TORRES,</b>	:	
<b>Plaintiff</b>	:	<b>No. 4:17-CV-1977</b>
	:	
<b>v.</b>	:	<b>Judge Brann</b>
	:	
<b>CAPT. B. HARRIS, LT. WENDLE,</b>	:	<b>Electronically Filed Document</b>
<b>C/O K. MYERS, C/O B. A. OWNS</b>	:	
<i>and C/O MCCALLISTER,</i>	:	<i>Complaint Filed 10/30/17</i>
	:	
<b>Defendants</b>	:	

**DEFENDANTS' STATEMENT OF UNDISPUTED  
MATERIAL FACTS**

1. Torres swallowed a razor blade and went to the hospital. *Torres*<sup>1</sup>, 13: 15-16.
2. The razor blade was not removed from his stomach at the hospital. *Torres*, 47: 23-25; 28: 1-2.
3. When he returned from the hospital, he was placed in a dry cell, which Torres also referred to as a “POC” at his deposition. *Torres*, 12: 19-24; 25: 11-12.
4. Department of Corrections Policy and Procedures Manual 6.3.1 “Facility Security” details the procedures for use of a dry cell. *Stevens*<sup>2</sup>, ¶6.

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<sup>1</sup> “Torres” refers to the deposition of Plaintiff Hector Vargas-Torres, attached hereto as Exhibit 1.

5. An inmate may be placed in a dry cell when the inmate has ingested an item. *Stevens*, ¶¶7-8.

6. Upon placement in the dry cell the inmate is handcuffed to the bed by securing an arm to the bunk furthest away from the toilet. The medical department examines the restraints to endure they are not restricting circulation. Additionally the handcuffs are removed for ten minutes every two hours so that the inmate can exercise his/her arm. The medical department again inspects the restraints. *Stevens*, ¶¶9-10; *Torres*, 25: 19-25; 26: 1-4.

7. These checks are called “dry cell exercises.” *Stevens*, ¶11.

8. When the handcuffs are removed for exercise, the inmate has the option of having the handcuffs moved to the other wrist. *Stevens*, ¶13.

9. Even if an inmate refuses to be exercised, the medical department must check an inmate’s circulation. *Stevens*, ¶12.

10. The dry cell exercise is recorded on either handheld video or via the internal closed circuit camera in the cell. *Stevens*, ¶14.

11. Torres was secured to the wall because of the razor in his stomach. *Torres*, 25: 4-7.

12. Torres was handcuffed to the wall in the dry cell. *Torres*, 25: 8-10.

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<sup>2</sup> “Stevens” refers to the Declaration of Captain Kevin Stevens, attached hereto as Exhibit 2.

13. On April 18, 2017, at approximately 6:30AM, a dry cell exercise was scheduled for Torres. *Video 1*<sup>3</sup>.

14. Team members assigned to the exercise were Corrections Officer 1 Barger operating the video camera, Defendant Owens who had handcuffs, and Defendant Myers. *Video 1* at 6:29:17.

15. Licensed Practical Nurse Wagman was also assigned to check circulation and restraints. *Video 1* at 6:29:44.

16. Torres did not want to exercise. *Video 1* at 6:30:53.

17. The team entered the cell to check his circulation. *Video 1* at 6:30:55.

18. Torres was covered with a blanket. *Video 1* at 6:31:01.

19. Defendant Owens applied a control technique to Torres' free hand to keep him restrained because Torres would pull the blanket over his hand that needed to be checked. *Video 1* at 6:31:26.

20. Torres did not want to have his circulation checked. *Video 1* at 6:31:06; *Torres*, 29: 2-3.

21. The nurse attempted to check his circulation several times. *Video 1* at 6:31:30.

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<sup>3</sup> "Video 1" refers to a recording of the dry cell exercise at approximately 6:30AM. This video contains time stamps directly on the screen. Citations contained within will reference the time stamp on the screen. The video is not filed on the docket and will be provided directly to chambers.

22. Defendants Owens and Myers attempted to remove the blanket to enable the nurse to do the dry cell exercise and to check circulation. *Video 1* at 6:31:57.

23. Torres began to struggle and became combative with the officers. *Video 1* at 6:32:04.

24. Defendants Owens and Myers applied a control technique by securing his free arm and his legs. *Video 1* at 6:32:06.

25. The nurse attempts to check his circulation again. *Video 1* at 6:32:25.

26. Defendants and the non-party individuals exit the cell. *Video 1* at 6:32:30.

27. Torres remained verbally combative for several minutes when filming continued. *Video 1* at 6:32:51.

28. During the debriefing, Defendant Wendle explains that a pressure point control technique was applied to Torres' mandible as well. *Video 1* at 6:37:57.

29. At no time is Torres struck by any individual nor is his head "slammed" off the bed or bunk. *Video 1, generally.*

30. At 8:30AM, another dry cell exercise was scheduled with the same team. *Video 2*<sup>4</sup>.

31. Torres did not want to be checked and became verbally combative almost immediately. *Video 2* at 1:45.

32. Torres began yelling “assault” as soon as the door to his cell was open before the officers are inside the cell. *Video 2* at 2:07.

33. The team again entered Torres’ cell. *Video 2* at 2:09.

34. Several attempts are made to check his circulation without touching Torres. *Video 2* at 2:40.

35. Defendants Owens and Myers attempted to remove the blanket while Torres continued to yell “assault.” *Video 2* at 3:07.

36. Torres resisted. *Video 2* at 3:10.

37. Defendants Myers and Owens again used control techniques to restrain Torres. *Video 2* at 3:10.

38. After the attempted circulation check, the officers began to walk away. *Video 2* at 3:38.

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<sup>4</sup> “Video 2” is a true and correct copy of the handheld video that filmed the dry cell exercise at 8:30. This video does not have a time stamp on the screen. Therefore, the citations contained within will cite to the time elapsed on the video. Finally, the relevant portion of this video is approximately four minutes. In the interest of full disclosure, the Defendants have provided the entire video with the warning that it contains nudity starting at 4:55. The video is not filed on the docket and will be provided directly to chambers.

39. Defendant Myers was by Torres' legs retrieving something he had dropped. *Video 2* at 3:39.

40. Torres jumped up and in the direction of Defendant Myers. *Video 2* at 3:42.

41. Defendant Owens pushed Torres away. *Video 2* at 3:43.

42. The Defendants and other individuals exited the cell. *Video 2* at 3:47.

43. At no time was Torres struck by any individual, nor is his head slammed off the bunk or wall. *Video 2, generally.*

44. Torres was housed alone in the cell. *See Video 1 and 2, generally.*

45. Defendant McCallister "runs the POC," meaning he is in charge of the inmates. *Torres*, 35: 2-9.

**Respectfully submitted,**

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**Date: February 7, 2020**

**By: s/ Allison L. Deibert**

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<b>MCCALLISTER,</b>	:	
<b>Defendants</b>	:	

**CERTIFICATE OF SERVICE**

I, Allison L. Deibert, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on February 7, 2020, I caused to be served a true and correct copy of the foregoing document titled Defendants' Statement of Undisputed Material Facts to the following:

**VIA U.S. MAIL**

**Smart Communications/PADOC  
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*s/ Allison L. Deibert*  
**ALLISON L. DEIBERT**  
Deputy Attorney General